Superior Court Judges Fall Conference
October 17, 2017
Chapel Hill, N.C.

Review of Land Use Decisions

David W. Owens
School of Government
CB 3330, Knapp-Sanders Building
The University of North Carolina at Chapel Hill
Chapel Hill, N.C. 27599

Phone: 919-966-4208
Email: owens@sog.unc.edu

I. Overview

North Carolina cities and counties have been delegated broad authority to adopt and apply a variety on local ordinances regulating land use and development.

The most commonly applied regulation of land use is a zoning ordinance. Over 560 of the state's cities and counties have adopted zoning ordinances. Over 90% of the state's population resides in zoned areas. A comparable number of jurisdictions have land subdivision ordinances. Many of the jurisdictions without zoning have specialized ordinances on specific land uses, such as ordinances regulating mobile home parks, junkyards, telecommunication facilities, or signs.

Thousands of individual decisions are made pursuant to these ordinances each year. SOG surveys indicate that very few of these wind up in court. While the rate of judicial review being sought varies somewhat based on the individual type of decision being made, typically petitions for judicial review are filed in only 1% to 2% of the decisions made by local governments. As would be expected, however, these tend to be the most contentious and complicated of the decisions made.

II. Types of Decisions Appealed

The form and nature of judicial review depends upon the type of decision being reviewed. The North Carolina statutes and cases establish four types of decisions under local development regulations:

1. Legislative
2. Quasi-judicial
3. Ministerial
4. Advisory

Legislative decisions are those that set general policies. Decisions to adopt, amend, or repeal an ordinance (which includes the zoning map) are included in this category. Massey v. City of Charlotte, 145 N.C. App. 345, 550 S.E.2d 838, *review denied*, 354 N.C. 219, 554 S.E.2d 342 (2001); Kerik v. Davidson County, 145 N.C. App. 222, 551 S.E.2d 186 (2001); Brown v. Town of Davidson, 113 N.C. App. 553, 439 S.E.2d 206 (1994); Sherrill v. Town of Wrightsville Beach, 81 N.C. App. 369, 373, 344 S.E.2d 357, 360 (1986). While there are detailed statutory procedural requirements for legislative decisions, the substance of the decision is generally discretionary (see chart below for key local process differences between legislative and quasi-judicial decisions).

Quasi-judicial decisions involve the application of ordinance policies to individual situations rather than the adoption of new policies. Quasi-judicial decisions involve two key elements: the finding of facts regarding the specific proposal and the exercise of some judgment and discretion in applying predetermined policies to the situation. County of Lancaster v. Mecklenburg County, 334 N.C. 496, 502, 434 S.E.2d 604, 612 (1993). Examples of quasi-judicial decisions include variances, permits for special and conditional uses (even if issued

by the governing board or planning board), certificates of appropriateness issued by a historic preservation commission, and appeals of staff's ministerial decisions and interpretations. Quasi-judicial decisions may be assigned by the ordinance to the board of adjustment, planning board, or governing board, but they may not be assigned to a staff administrator.

Administrative/ministerial decisions are the day-to-day matters related to implementation of a land development regulation. Typically handled by staff, these include issuance of permits for permitted uses, initial interpretations of ordinances, and initiation of enforcement actions. While these often involve some fact-finding, they apply *objective*, nondiscretionary standards. If all of the objective standards of the ordinance are met, approval must be issued. No evidentiary hearing is required as part of the decision-making process and the staff has no authority to impose or consider factors beyond the technical standards of the ordinance. Nazziola v. Landcraft Properties, Inc., 143 N.C. App. 564, 545 S.E.2d 801 (2001) (subdivision plat approval an administrative decision); Sanco of Wilmington Service Corp. v. New Hanover County, 166 N.C. App. 471, 601 S.E.2d 889 (2004) (where plat approval standards are entirely objective, decision is ministerial).

As the name implies, advisory decisions are recommendations regarding legislative and advisory decisions. If an appeal is to be made, it is of the final decision, not the advisory recommendation.

The categorization of a decision as legislative, quasi-judicial, or administrative is a question of law, ultimately determined by the court. Northfield Development Co., Inc. v. City of Burlington, 136 N.C. App. 272, 523 S.E.2d 743, *aff'd per curiam*, 352 N.C. 671, 535 S.E.2d 32 (2000). Devaney v. City of Burlington, 143 N.C. App. 334, 337–38, 545 S.E.2d 763, 765, *review denied*, 353 N.C. 724, 550 S.E.2d 772 (2001). On borderline calls, some deference is afforded the ordinance's categorization of the decision. County of Lancaster v. Mecklenburg County, 334 N.C. 496, 510, 434 S.E.2d 604, 614 (1993).

The categorization of decisions depends on the nature of the decision, not the body making the decision. A special use permit decision is a quasi-judicial decision no matter who is deciding it. The standards used in an individual ordinance are key to the characterization of the decision. For example, in most ordinances a subdivision plat approval is a ministerial decision because the standards applied are entirely objective (e.g., standards on right-of-way widths, street and utility construction, and lot configuration). However, a local government may add discretionary standards for plat approval, such as that the subdivision not have significant adverse impact on traffic. If this is done, the normally ministerial plat approval decision is converted to a quasi-judicial one. Similarly, if a modification to required ordinance standards is permitted upon meeting a standard that requires the exercise of judgment and discretion, that decision is properly characterized as quasi-judicial. Butterworth v. City of Asheville, ___ N.C. App. ___. 786 S.E.2d 101 (2016).

Some Key Differences Between Legislative and Quasi-judicial Decisions

	Legislative	**Quasi-judicial**
Decision-maker	Only governing board can decide (others may advise)	Can be board of adjustment, planning board, or governing board
Notice of hearing	Newspaper; mailed notice to owners and neighbors and posted notice for map amendments; actual notice to owner if others initiate map amendment	Mailed notice to applicant, owner, and abutting owners; posted notice; others as ordinance mandates
Type of hearing	Legislative	Evidentiary
Speakers at hearings	Can reasonably limit number of speakers, time for speakers	Witnesses are presenting testimony, can limit to relevant evidence that is not repetitious
Evidence	None required; members free to discuss issue outside of hearing	Must have substantial, competent, material evidence in record; witnesses under oath, subject to cross-examination; no ex parte communication allowed
Findings	None required (statement on rationale required for zoning amendments)	Written findings of fact required; must determine contested facts
Voting	Simple majority	Simple majority *except* 4/5 to grant a variance
Standard for decision	Establishes standards	Can only apply standards previously set in statute and ordinance
Conditions	Not allowed, except with conditional zoning districts	Allowed if based on standard in ordinance
Time to initiate judicial review	Two months to file challenge map amendment; one year from standing for text amendment	30 days to file challenge
Conflict of interest	Requires direct, substantial, and readily identifiable financial interest to disqualify	Any financial interest, personal bias, or undisclosed ex parte communication disqualifies; impartiality required
Creation of vested right	None	Yes, if substantial expenditures are made in reliance on it

III. Form of Action

A. Legislative Decision

Judicial challenges to legislative land use regulatory decisions are brought under G.S. 1-253 to -267, the declaratory judgment statute. These provisions may be used to address disputes regarding the constitutionality, validity, or construction of ordinances. A legislative is not reviewable upon a writ of certiorari. In re Markham, 259 N.C. 566, 569, 131 S.E.2d 329, 332, *cert. denied*, 375 U.S. 931 (1963).

B. Quasi-judicial Decisions

Appeals of quasi-judicial land use regulatory decisions are reviewed by the superior court in proceedings in the nature of certiorari. In 2009 the General Assembly codified most of the provisions for judicial review of quasi-judicial zoning decisions as G.S. 160A-393. G.S. 153A-349 makes this section applicable to appeals of counties as well. Appeals of quasi-judicial decisions made under other development ordinances (such as subdivision regulations) are reviewed in the same manner. In most instances judicial appeals of administrative land use decisions will also be in the nature of certiorari in those relatively unusual situations where there is not a mandatory appeal to the board of adjustment.

G.S. 160A-393(c) sets the requirements for a petition for writ of certiorari. The petition must contain the basic facts that establish standing, the grounds of the alleged error, and the relief the person seeks from the court. G.S. 160A-393(f) provides that upon filing the petition, the petitioner shall submit to the clerk of superior court a proposed writ. The proposed writ must include a direction to the responding local government to prepare and certify to the court by a specified date the record of the board's proceedings on the matter. The petition is filed with the clerk of superior court in the county in which the matter arose. The clerk then issues the writ ordering the city or county to prepare and certify to the court the record. The petitioner must serve the writ upon all respondents, following the same rules for service of a complaint in a civil suit. No summons is to be issued. The clerk is directed to issue the writ without notice to the respondent(s) if the petition is properly filed and is in proper form.

The respondent may, but is not required to, file an answer to the petition for writ of certiorari. G.S. 160A-393(g). The common practice in North Carolina is not to file such an answer.

In general it is inappropriate to challenge a legislative decision as part of judicial review of a quasi-judicial or administrative decision applying the ordinance. Simpson v. City of Charlotte, 115 N.C. App. 51, 443 S.E.2d 772 (1994). The constitutionality of an ordinance provision cannot be challenged in a certiorari review of a board of adjustment decision. Batch v. Town of Chapel Hill, 326 N.C. 1, 11, 387 S.E.2d 655, 661–62, *cert. denied*, 496 U.S. 931 (1990). In these cases, the board of adjustment has no authority to rule on the constitutionality of the ordinance, and the superior court is limited to review of whether the board properly

affirmed or overruled the officer's determination. Because of these limitations, it is appropriate for a plaintiff to bring two separate actions when he or she is both challenging the validity of an ordinance and seeking review of an individual decision pursuant to that ordinance.

C. Administrative/Ministerial Decisions

Most administrative decisions must first be appealed to the board of adjustment, so the court's review is most commonly a review in the nature of certiorari of the board's decision rather than the initial ministerial decision.

On rare occasion, a writ of mandamus is warranted to compel execution of a ministerial duty. For example, where a zoning administrator fails to place an appeal of his or her ruling on the board of adjustment agenda, mandamus lies to compel that action. Morningstar Marinas/Eaton Ferry, LLC v. Warren County, 368 N.C. 360, 777 S.E.2d 733 (2015).

IV. Parties and Standing

A. Legislative Decisions

For legislative decisions, the governmental unit itself, not the governing board or its individual members, is the proper party if the decision is being challenged. If monetary damages are being sought, board members may be sued in their individual as well as their official capacities.

The basic rule for standing to challenge legislative decisions in state court in North Carolina is set forth in Taylor v. City of Raleigh, 290 N.C. 608, 227 S.E.2d 576 (1976). The court there ruled that challenges to legislative zoning decisions could be brought only "by a person who [had] a specific personal and legal interest in the subject matter affected by the zoning ordinance and who [was] directly and adversely affected thereby." A citizen or a taxpayer may not file a lawsuit as a member of the general public to bring a conceptual challenge to a legislative decision.

Also, the general rules of standing apply in that the plaintiff must allege injury in fact, that the injury is fairly traceable to the challenged action, and that the injury would be redressed by a favorable decision. Failure to meet these rules deprive a party of standing. Morgan v. Nash County, 224 N.C. App. 60, 735 S.E.2d 615 (2012), *review denied*, 366 N.C. 561, 738 S.E.2d 379 (2013).

Also, if an organization is making an appeal and that organization has procedures that must be followed prior to initiating litigation, failure to meet its internal requirements deprives the organization of standing. Willomere Community Assoc., Inc. v. City of Charlotte, ___ N.C. App. ___, 792 S.E.2d 805 (2016), *review granted*, 795 S.E.2d 805 (2017).

B. Quasi-judicial Decision

For quasi-judicial decisions, G.S. 160A-393(e) provides that the respondent to the petition for writ of certiorari is the local government, not the individual board making the decision. If the petition for review is brought by the unit of government itself, the respondent is to be the decision-making board.

If the petitioner is not the applicant for the decision being contested, the applicant must also be named as a respondent. As the statute makes the applicant a necessary party, failure to name the applicant deprives the superior court of jurisdiction to review the case. Hirshman v. Chatham County, ___ N.C. ___, 792 S.E.2d 211 (2016). This case also noted that an appeal cannot be amended to add a necessary party after the time period to file an appeal has run.

The basic rule for standing to challenge quasi-judicial decisions is similar to the one applicable to legislative decisions, though it has a statutory dimension. G.S. 153A-345(b) and 160A-388(b) provide that "any person aggrieved" may make appeals to the board of adjustment. These statutes also allow appeals by "an officer, department, board, or bureau" of the city or county involved.

G.S. 160A-393(d) defines who can file a petition for writ of certiorari to review a quasi-judicial land use regulatory decision. This section specifies three categories of entities with standing to bring these judicial appeals:

1. Those who applied for approval or who have a property interest in the project or property subject to the application. This includes all persons with a legally defined interest in the property, including not only an ownership interest but also a leasehold interest, an option to purchase the property, or an interest created by an easement, restriction, or covenant.
2. The local government whose board made the decision being appealed.
3. Other persons who will suffer "special damages" as a result of the decision. Included here are both individuals (such as a neighbor who contends the decision will adversely affect his or her property) and qualifying associations.

In a series of cases applying the "special damages" test for standing to appeal quasi-judicial zoning decisions, the courts have held that appellants must present evidence that they will suffer damages distinct from the rest of the community. Cherry v. Wiesner, ___ N.C. App. ___, 781 S.E.2d 871, *review denied*, 369 N.C. 33, 792 S.E.2d 779 (2016); Sanchez v. Town of Beaufort, 211 N.C. App. 574, 710 S.E.2d 350, *review denied*, 365 N.C. 349, 718 S.E.2d 152 (2011); Pigford v. Board of Adjustment, 49 N.C. App. 181, 270 S.E.2d 535 (1980), *review denied,* 301 N.C. 722, 274 S.E.2d 230 (1981). Mere proximity of land ownership is insufficient. Casper v. Chatham County, 186 N.C. App. 456, 651 S.E.2d 299 (2007).

It is not necessary, however, to show a negative property value impact in

order to establish special damages. In Mangum v. Raleigh Board of Adjustment, 362 N.C. 640, 669 S.E.2d 279 (2008), the court found that allegations of parking, stormwater, and crime problems are sufficient to establish "special damages" and, contrary to suggestions in earlier cases, that a plaintiff is not required to also show that property values would be reduced as a result of the special use permit.

The potential for special damages may be established by affidavits or testimony. The court applies a de novo review on a motion to dismiss for lack of standing.

It is relatively common for a group, such as a neighborhood association, to seek to initiate or intervene as a party in a judicial challenge to a land use regulatory decision. The question of associational standing is governed by G.S. 160A-393(d). It provides that neighborhood associations and associations organized to protect and foster the interests of the neighborhood or local area have standing, provided at least one of the members of the association would have individual standing and the association was not created in response to the particular development that is the subject of the appeal.

V. Exhaustion of Administrative Remedies

The local government must have made a final decision and all administrative appeals must have been exhausted prior to judicial review. Interlocutory appeals are not allowed.

The court does not have subject matter jurisdiction if the plaintiff fails to appeal a staff decision to the designated board. Sanford v. Williams, 221 N.C. App. 107, 727 S.E.2d 362, *review denied,* 366 N.C. 246, 731 S.E.2d 144 (2012); Laurel Valley Watch, Inc. v. Mountain Enterprises of Wolf Ridge, LLC, 192 N.C. App. 391, 665 S.E.2d 561 (2008); Northfield Development Co., Inc. v. City of Burlington, 165 N.C. App. 885, 599 S.E.2d 921, *review denied*, 359 N.C. 191, 607 S.E.2d 278 (2004).

An exception to this rule applies if a constitutional issue is raised. As the board of adjustment cannot adjudicate a constitutional claim, there is no requirement to appeal that to the board prior to initiating judicial action. Swan Beach Corolla, LLC v. County of Currituck, 234 N.C. App. 617, 760 S.E.2d 302 (2014).

VI. Statutes of Limitation

A. Legislative Decisions

The statutes of limitation for legislative zoning decisions are codified in the civil procedure portions of the statutes. G.S. 1-54(10) sets the general rule of a one-year statute of limitations to contest the validity of a zoning or unified development ordinance other than some rezonings. The action accrues when the party bringing the action first has standing to do so, provided any challenge to the adoption process

must be brought within three years of the challenged adoption. G.S. 1-54.1 sets a two-month statute of limitations for legislative zoning decisions that involve adopting or amending a zoning map or approving a request for a rezoning to a special or conditional use district or a conditional district, with such action accruing upon adoption of the ordinance or amendment. The zoning statutes restate these statutes of limitation and provide that they do not prohibit a party in a zoning enforcement action and persons appealing a notice of violation from raising the invalidity of the ordinance as a defense, provided that any challenge to the adoption process must be brought within three years of the challenged adoption. G.S. 153A-348(c); 160A-364.1(c).

For the most part, the two-month statute of limitations does not apply to land use ordinances that are not zoning ordinances. In Coventry Woods Neighborhood Ass'n, Inc. v. City of Charlotte, 202 N.C. App. 247, 688 S.E.2d 538, *review denied*, 364 N.C. 128, 695 S.E.2d 757 (2010), the court refused to apply the two-month statute of limitations to a challenge of a subdivision ordinance. The court distinguished zoning from subdivision ordinances and applied the more general three-year statute of limitations in G.S. 1-52 to the subdivision ordinance.

B. Quasi-judicial Decisions

The time period to initiate a judicial challenge of a quasi-judicial zoning decision is set by G.S. 153A- 345(e2) and 160A-388(e2). These statutes provide that appeals to superior court must be made within thirty days of the later of:

(1) the receipt of a written copy of the decision by aggrieved parties; or

(2) the filing of the decision in an office designated by the ordinance.

If the quasi-judicial decision is mailed but a copy is not filed with the clerk to the board, the period does not begin to run. The time limit is strictly observed and the court cannot considered an untimely appeal. McCrann v. Village of Pinehurst, 216 N.C. App. 291, 716 S.E.2d 667 (2011) (dismissing appeal filed 31 days after order granting permit was filed).

C. Other Claims

A claim that land use fees were imposed without statutory authority to do so is not a claim based on a statute that is subject to a three year statute of limitation, but was rather subject to the ten year statute of limitation for actions not otherwise addressed. Point South Properties, LLC v. Cape Fear Public Utility Authority, ___ N.C. App. ___, 778, S.E.2d 284 (2015).

In most North Carolina cities and counties, zoning violations are investigated and cited on a complaint basis. Zoning officials do not tend to initiate independent investigations of violations absent the filing of a complaint. The statutes of limitations were amended in 2017 to address the time within which local governments must initiate enforcement actions. G.S. 1-51 was amended to provide that a suit against a landowner for violation of any land use regulation or permit must be initiated within five years. The five-year period starts to run when the

facts of the violation are known to the governing board or any agent or employee of the local government or when the violation can be determined from the public records of the local government. Apparently any public record, such as filings with a utility department or tax listings, as well as filings with the planning and inspections department, trigger the running of this period. In addition, G.S. 1-49 was amended to set a seven-year period to bring suit for a land use violation running from the time the violation is "apparent from a public right of way" or is in "plain view from a place to which the public is invited." In both instances, an action for an injunction can still be brought later to address conditions that are injurious or dangerous to the public health or safety.

The time for filing for judicial review of decisions made under subdivision ordinances, historic district regulations, and other non-zoning land use ordinances are not specifically set by statute. In these instances the appeal must be filed within a reasonable time. White Oak Properties, Inc. v. Town of Carrboro, 313 N.C. 306, 327 S.E.2d 882 (1985); Allen v. City of Burlington Board of Adjustment, 100 N.C. App. 615, 397 S.E.2d 657 (1990); *In re* Greene, 29 N.C. App. 749, 225 S.E.2d 647, *review denied*, 290 N.C. 661, 228 S.E.2d 451 (1976).

Also, many ordinances set specific time limits for making appeals of staff decisions to the board of adjustment (as distinct from appealing from the board of adjustment to court). Failure to make a timely administrative appeal deprives the board of jurisdiction, just as with the courts. Fairway Outdoor Advertising, LLC v. Town of Cary, 225 N.C. App. 676, 739 S.E.2d 579 (2013).

VII. Standard of Review

A. Legislative Decisions

Courts nationally and in North Carolina give substantial deference to the judgment of elected officials making legislative land use regulatory decisions.

In one of the earliest zoning cases in North Carolina, the court held in *In re* Parker, 214 N.C. 51, 197 S.E. 706, *appeal dismissed*, 305 U.S. 568 (1938), that a zoning ordinance is presumed to be valid and a court must defer to the city council's legislative judgment unless it is clearly unreasonable or abusive of discretion. A zoning ordinance is not invalid unless it clearly "has no foundation in reason and is a mere arbitrary or irrational exercise of power having no substantial relation to the public health, the public morals, the public safety or the public welfare in its proper sense." In a more recent zoning case, the court similarly observed, "In reviewing an ordinance to determine whether the police power has be exercised within constitutional limitations, this Court does not analyze the wisdom of a legislative enactment." Grace Baptist Church v. City of Oxford, 320 N.C. 439, 443, 358 S.E.2d 372, 374 (1987). When reviewing rezonings, courts "are not free to substitute their opinion for that of the legislative body so long as there is some plausible basis for the conclusion reached by that body." Zopfi v. City of Wilmington, 273 N.C. 430, 437, 160 S.E.2d 325, 332 (1968). A governing board's

decision not to zone or to rezone a parcel has the same presumption of validity.

The burden is on a challenger to establish the invalidity of a legislative regulatory decision. Town of Atlantic Beach v. Young, 307 N.C. 422, 426, 298 S.E.2d 686, 690, *cert. denied*, 462 U.S. 1101 (1983).

A whole record review to allegations that a legislative decision is arbitrary and capricious. Coucoulas/Knight Properties v. Town of Hillsborough, 199 N.C. App. 455, 457–58, 683 S.E.2d 228, 230 (2009), *aff'd per curiam*, 364 N.C. 127, 691 S.E.2d 411 (2010); Summers v. City of Charlotte, 149 N.C. App. 509, 562 S.E.2d 18, *review denied,* 355 N.C. 758, 566 S.E.2d 482 (2002). The reviewing court must base its decision on the record before the board rather than taking additional evidence to make a de novo ruling. Kerik v. Davidson County., 145 N.C. App. 222, 551 S.E.2d 186 (2001).

A limited exception to the presumption of validity of legislative regulatory decisions exists for spot zoning cases. In these cases the burden is on the government to establish a reasonable basis for the rezoning decision.

B. Quasi-judicial Decisions

The courts apply a different, though often also deferential, review to quasi-judicial land use regulatory decisions.

The basic standard for judicial review of quasi-judicial decisions is set forth in Coastal Ready-Mix Concrete Co. v. Board of Commissioners, 299 N.C. 620, 265 S.E.2d 379 (1980), and is codified at G.S. 160A-393(k)(1). Courts reviewing quasi-judicial decisions examine the following five questions:

1. Were there errors in law?
2. Were proper statutory and ordinance procedures followed and was decision within statutorily delegated authority?
3. Were due process rights secured (including rights to offer evidence, cross-examine witnesses, and inspect documents)?
4. Was competent, material, and substantial evidence in the record to support the decision?
5. Was the decision arbitrary and capricious?

The court, depending upon which of these issues is being reviewed, applies one of two standards of review. A de novo review is made of alleged errors of law. G.S. 160A-393(k)(2). In a de novo review the court is not bound by findings made by the decision-making board. Instead, the court considers the matter anew, as if not considered or decided by the board. A whole record review is conducted of allegations that a decision was not supported by the evidence or that the decision was arbitrary and capricious. If both types of allegations are made, the trial court must delineate which standard was applied to which issue (and apply more than one standard if the issues so require). Mann Media, Inc. v. Randolph County

Planning Board, 356 N.C. 1, 14, 565 S.E.2d 9, 18 (2002); Meyers Park Homeowners Assoc., Inc. v. City of Charlotte, 229 N.C. App. 204, 747 S.E.2d 338 (2013).

When conducting a whole record review, a superior court is sitting in an appellate capacity:

> In reviewing the sufficiency and competency of the evidence at the appellate level, the question is not whether the evidence before the superior court supported the court's order, but whether the evidence before the town board was supportive of its action. In proceedings of this nature, the superior court is not the trier of fact. Such is the function of the town board. The trial court, in reviewing the decision of a town board on a conditional use permit application, sits in the posture of an appellate court. The trial court does not review the sufficiency of evidence presented to it but reviews that evidence presented to the town board.

Coastal Ready-Mix Concrete Co. v. Board of Commissioners, 299 N.C. 620, 626–27, 265 S.E.2d 379, 383 (1980).

The trial court is therefore bound by the facts found by the decision-making board, provided they are supported by competent, substantial evidence. Thompson v. Town of White Lake, ___ N.C. App. ___, 797 S.E.2d 346 (2017). The trial court may not make new findings of fact or conduct a de novo review of the evidence as it is the sole province of the decision-making board to weigh the evidence and make determinations of credibility. Mangum v. Raleigh Board of Adjustment, 196 N.C. App. 249, 260, 674 S.E.2d 742, 750–51 (2009). The trial court may recite, summarize, or synthesize the evidence that was before the decision-making board, but may not make new findings.

As for alleged procedural errors in a quasi-judicial matter, while fundamental fairness is required, the strict rules of evidence and procedure can be relaxed and harmless errors do not necessitate a remand on appeal. Durham Video & News, Inc. v. Durham Bd. of Adjustment, 144 N.C. App. 236, 550 S.E.2d 212, *review denied*, 354 N.C. 361, 556 S.E.2d 299 (2001); Dockside Discotheque, Inc. v. Board of Adjustment, 115 N.C. App. 303, 444 S.E.2d 451, *review denied*, 338 N.C. 309, 451 S.E.2d 635 (1994).

It is also important to note that procedural requirements imposed by local ordinances, as well as those imposed by the general zoning enabling act, are binding. George v. Town of Edenton, 294 N.C. 679, 242 S.E.2d 877 (1978); Humble Oil & Refining Co. v. Board of Aldermen, 284 N.C. 458, 202 S.E.2d 129 (1974). For example, many local ordinances have supplemental hearing notice requirements and mandatory referral of matters to advisory boards.

VIII. Disposition

If a court invalidates a legislative land use regulatory decision, the challenged action is void ab initio. Keiger v. Winston-Salem Board of Adjustment, 281 N.C. 715, 721, 190 S.E.2d 175, 179 (1972).

G.S. 160A-393(l) addresses the remedies available for consideration by courts in reviewing quasi-judicial decisions. It provides that a court may affirm or reverse the original decision made by the local government board or may remand it with either instructions or a direction for further proceedings. A remand can be made to correct a procedural record or to make findings of fact based on the existing record. If the court finds the board's decision is not supported by substantial competent evidence in the record or has an error of law, the remand may include an order to issue the approval (subject to reasonable and appropriate conditions) or to revoke the approval. The relief can also include appropriate injunctive orders.

If there is competent, material, and substantial evidence in the record to support findings that all relevant standards have been met and no competent evidence to the contrary, the court may order the permit issued without further hearing on remand (conversely, it can order the permit revoked if it is determined it was wrongfully issued). G.S. 160A-393(l)(3). If a permit contains conditions deemed to be improper, the court may order the offending conditions struck and order reissuance of a corrected permit where it is clear that this is the only possible result on remand. Overton v. Camden County, 155 N.C. App. 100, 109, 574 S.E.2d 150, 156 (2002).

Since interpretation of the ordinance or statute is a question of law subject to de novo review, in most instances the appropriate judicial disposition of such a matter is an order mandating issuance or denial of the challenged permit. The same is true for an appeal of a ministerial decision that does not involve contested facts.

SOG Resources

Lovelady, Adam, SUBDIVISION REGULATIONS IN NORTH CAROLINA (2015)

Owens, David W., INTRODUCTION TO ZONING AND DEVELOPMENT REGULATION (4th ed. 2013)

Owens, David W., LAND USE LAW IN NORTH CAROLINA (2d ed. 2011)

Owens, David W. and Adam Lovelady, QUASI-JUDICIAL HANDBOOK: A GUIDE FOR BOARDS MAKING DEVELOPMENT REGULATION DECISIONS (2017)

Reports (Free online at SOG website, http://www.sog.unc.edu/node/953)

Lovelady, Adam, PLANNING AND ZONING FOR SOLAR IN NORTH CAROLINA (2014)

Owens, David W., and Dayne Batton, 2012 ZONING SURVEY REPORT: ZONING G ADOPTION, ADMINISTRATION, AND PROVISIONS FOR DESIGN STANDARDS AND ALTERNATIVE ENERGY FACILITIES (Planning and Zoning Law Bulletin No. 20, July 2012)

Owens, David W., DEVELOPMENT MORATORIA: THE LAW AND PRACTICE IN NORTH CAROLINA (Special Series No. 26, December 2009)

Owens, David W., THE USE OF DEVELOPMENT AGREEMENTS TO MANAGE LARGE-SCALE DEVELOPMENT: THE LAW AND PRACTICE IN NORTH CAROLINA (Special Series No. 25, October 2009)

Owens, David W., ZONING AMENDMENTS IN NORTH CAROLINA (Special Series No. 24, February 2008)

Owens, David W. and Andrew Stevenson, AN OVERVIEW OF ZONING DISTRICTS, DESIGN STANDARDS, AND TRADITIONAL NEIGHBORHOOD DESIGN IN NORTH CAROLINA ZONING ORDINANCES (Special Series No. 23, October 2007)

Owens, David W., SPECIAL USE PERMITS IN NORTH CAROLINA ZONING (Special Series No. 22, April 2007)

Owens, David W. and Nathan Branscome, AN INVENTORY OF LOCAL GOVERNMENT LAND USE ORDINANCES IN NORTH CAROLINA (Special Series No. 21, April 2006)

Owens, David W., THE NORTH CAROLINA EXPERIENCE WITH MUNICIPAL EXTRATERRITORIAL PLANNING JURISDICTION (Special Series No. 20, Jan. 2006)

Owens, David W., and Adam Bruggemann, A SURVEY OF EXPERIENCE WITH ZONING VARIANCES (Special Series No. 18, Feb. 2004)

Coates Canons: http://sogweb.sog.unc.edu/blogs/localgovt/